

#### **4-9-1. Definitions.**

As used in this chapter:

- (1) "Correct", when used in connection with weights and measures, means conformance to applicable requirements of this chapter.
- (2) "Package" means a commodity put up or packaged before sale in either wholesale or retail sale units.
- (3) "Primary standards" mean the physical standards of the state, described in Section 4-9-4, which are the legal reference from which all other standards and weights and measures are derived.
- (4) "Sale from bulk" means the sale of commodities, when the quantity is determined at the time of sale.
- (5) "Secondary standards" means a physical standard which is traceable to primary standards through comparisons, using acceptable laboratory procedures.
- (6) "Weighing and measuring" means the use of weights and measures.
- (7) "Weight" means net weight, unless the label declares that the product is sold by drained weight, in which case, "weight" means net drained weight.
- (8) "Weights and measures" means weights and measures, and instruments or devices used for weighing or measuring, including an appliance or accessory associated with the instrument or device.
- (9) "Weights and measures registration" means the issuance of a certificate by the commissioner to a weights and measures user.
- (10) "Weights and measures user" means a person who uses weights and measures in trade or commerce.

Amended by Chapter 358, 2004 General Session

#### **4-9-2. Authority to promulgate rules.**

The department is authorized, subject to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to make and enforce such rules as in its judgment are necessary to administer and enforce this chapter.

Amended by Chapter 382, 2008 General Session

#### **4-9-3. Weights and measures -- Systems used -- Basic units, tables, and equivalents as published by National Institute of Standards and Technology.**

- (1) The department shall use the same system of weights and measures that is customarily used in the United States, and the metric system of weights and measures.
- (2) Either system may be used for commercial purposes in the state.
- (3) The definitions of basic units of weight and measure, the tables of weight and measure, and the weights and measures equivalents published by the National Institute of Standards and Technology, shall determine the weights and measures systems used within the state.

Amended by Chapter 358, 2004 General Session

#### **4-9-4. Weights and measures -- Primary state standards -- Secondary state**

**standards -- Verification.**

(1) Weights and measures that are traceable to the United States prototype standards supplied by the federal government, or approved as being satisfactory by the National Institute of Standards and Technology, shall be the state primary standards, and shall be maintained in the calibration prescribed by the National Institute of Standards and Technology.

(2) Secondary standards may be prescribed by the department and shall be verified upon their initial receipt, and as often after initial receipt as is considered necessary by the department.

Amended by Chapter 358, 2004 General Session

**4-9-5. Weights and measures -- Specifications, tolerances, and technical data published in National Institute of Standards and Technology Handbook govern.**

Unless modified by the department, Handbook 44, Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices, National Institute of Standards and Technology, adopted by the National Conference on Weights and Measures, including supplements or revisions to Handbook 44, shall determine the specifications, tolerances, and other technical requirements for devices used for:

- (1) commercial weighing and measuring;
- (2) law enforcement;
- (3) data gathering; and
- (4) other weighing and measuring purposes.

Amended by Chapter 358, 2004 General Session

**4-9-5.2. Adopting uniform packaging and labeling regulation.**

Unless modified by the department, the Uniform Packaging and Labeling Regulation, adopted by the National Conference on Weights and Measures in Handbook 130, Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality, National Institute of Standards and Technology, shall apply to packaging and labeling in the state.

Amended by Chapter 358, 2004 General Session

**4-9-5.3. Adopting uniform regulation for the method of sale of commodities.**

Unless modified by the department, the Uniform Regulation for the Method of Sale of Commodities, adopted by the National Conference on Weights and Measures, in Handbook 130, Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality, National Institute of Standards and Technology, shall apply to the method of sale of commodities in the state.

Amended by Chapter 358, 2004 General Session

**4-9-5.4. Adopting uniform regulation for the voluntary registration of servicepersons and service agencies for commercial weighing and measuring devices.**

Unless modified by the department, the Uniform Regulation for the Voluntary Registration of Servicepersons and Service Agencies for Commercial Weighing and Measuring Devices, adopted by the National Conference on Weights and Measures in Handbook 130, Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality, National Institute of Standards and Technology, shall apply to the registration of servicepersons and service agencies in the state.

Amended by Chapter 358, 2004 General Session

**4-9-6. Department duties -- Seizure of incorrect weights and measures.**

- (1) The department may:
- (a) establish weights and measures standards, specifications, and tolerances for:
    - (i) all commodities;
    - (ii) the fill for any commodity contained in a package;
    - (iii) labels or labeling of a commodity; and
    - (iv) weights and measures used commercially;
  - (b) inspect and test weights and measures kept, offered, or exposed for sale to determine if they are correct;
  - (c) inspect and test weights and measures commercially used to determine if they are correct;
  - (d) test all weights and measures used to check the receipt or disbursement of supplies used by a state agency or institution funded by the state;
  - (e) in accordance with sampling procedures recognized and designated in Handbook 133, Checking the Net Contents of Packaged Goods, National Institute of Standards and Technology, inspect and test any packaged commodity kept, offered, or exposed for sale, sold, or in the process of delivery, to determine if the package contains the amount represented;
  - (f) determine the appropriate term or unit of weight or measure to be used for container sizes, if the department determines that an existing practice of declaring the quantity by weight, measure, count, or any combination of these practices, hinders value comparisons by consumers;
  - (g) approve correct weights and measures and reject and mark as "rejected," weights and measures that are incorrect;
  - (h) allow reasonable variations from a stated weight or measure caused by loss or gain due to:
    - (i) moisture during the course of acceptable distribution practices; or
    - (ii) unavoidable deviations in acceptable manufacturing practices;
  - (i) grant an exemption from the requirements of this chapter or from any rule promulgated under this chapter, when the department determines that the exemption is necessary for the maintenance of acceptable commercial practices;
  - (j) maintain on file, for public inspection, a copy of each handbook prepared by the National Institute of Standards and Technology which is used to enforce this

chapter; and

(k) establish and charge fees as authorized under Subsection 4-2-2(2) for the inspection of weights and measures.

(2) The department may seize weights and measures that are:

(a) incorrect and are not corrected within a reasonable time specified by the department; or

(b) used or disposed of in a manner not authorized by the department.

Amended by Chapter 358, 2004 General Session

**4-9-7. Enforcement powers of department.**

(1) For the purpose of enforcing this chapter, the department may:

(a) enter any commercial premises open to the public during normal working hours after the presentation of credentials;

(b) issue in writing a "stop-use, hold, or removal order" with respect to any weights or measures commercially used or a "stop sale, use, or removal order" with respect to any packaged commodity or bulk commodity offered for sale;

(c) seize as evidence, without formal warrant, any incorrect or unapproved weight, measure, package, or commodity offered for sale or sold in violation of this chapter;

(d) (i) seek an order of seizure or condemnation of any weight, measure, package, or sale from bulk that violates this chapter; or

(ii) upon proper grounds, obtain a temporary restraining order or permanent injunction to prevent a violation of this chapter; and

(e) stop any commercial vehicle and after presenting credentials:

(i) inspect its contents;

(ii) require the person in charge of the vehicle to produce any documents in his possession concerning the contents; or

(iii) require the person to proceed with the vehicle to some specified place for inspection.

(2) If an order has been issued under Subsection (1)(b), the weights, measures, or commodities subject to the order may not be used, moved, or offered for sale until the department issues a written release.

(3) No bond shall be required of the department in any injunctive proceeding brought under this section.

Amended by Chapter 157, 1990 General Session

**4-9-8. Sale of commodities in liquid form -- Sale of commodities in nonliquid form -- Requirements.**

Commodities in liquid form shall be sold by liquid measure or by weight. Commodities not in liquid form shall be sold only by weight, measure, or by count, so long as the method of sale provides accurate quantity information.

Enacted by Chapter 2, 1979 General Session

#### **4-9-9. Bulk sales -- Information furnished to purchaser.**

Whenever the quantity is determined solely by the seller, in the absence of the buyer, all bulk sales of heating fuel and other bulk sales as determined by the department shall be accompanied by a delivery ticket containing the following information:

- (1) the name and address of the vendor and purchaser;
- (2) the date delivered;
- (3) the quantity delivered and the quantity upon which the price is based, if different from the delivered quantity;
- (4) a description of the bulk material sold, including any quality representation made in connection with the sale; and
- (5) the number of individually wrapped packages.

Amended by Chapter 30, 1992 General Session

#### **4-9-10. Packaged commodity sales -- Labeling information specified -- When price per single unit of weight to be displayed.**

(1) Any packaged commodity offered for sale shall bear on the outside of the package a definite, plain, and conspicuous declaration of:

- (a) the identity of the commodity in the package, unless the same can easily be identified through the wrapper or container;
- (b) the quantity of contents in terms of weight, measure, or count; and
- (c) the name and place of business of the manufacturer, packer, or distributor, if the packaged commodity is offered for sale, or sold other than on the premises where packaged.

(2) Any package which is one of a lot containing random weights of the same commodity and bearing the total sales price of the package shall, in addition to compliance with Subsection (1) of this section, bear on the outside of the package a definite, plain, and conspicuous declaration of the price per single unit of weight.

Enacted by Chapter 2, 1979 General Session

#### **4-9-11. Advertisement of packaged commodity sales -- Requirements.**

An advertisement which promotes a packaged commodity with the retail price stated shall plainly and conspicuously advertise the quantity required to appear on the package. If a dual quantity declaration is required by law, only the declaration that sets forth the quantity in terms of the smaller unit of weight or measure need appear in the advertisement.

Amended by Chapter 19, 1985 General Session

#### **4-9-12. Unlawful acts specified.**

A person may not:

- (1) sell, offer, or present for sale a commodity whose weight and measure is less than the weight and measure represented as being sold, offered, or exposed for sale;

(2) misrepresent the price of a commodity sold, advertised, exposed, or offered for sale by weight, measure, or count, or to represent the price in a manner that misleads or deceives a person;

(3) use or possess an incorrect weight or measure in commerce;

(4) remove a tag, seal, or mark from a weight or measure without specific written authorization from the department;

(5) hinder or obstruct an agent of the department dealing with weights and measures in the performance of the agent's duties; or

(6) operate weights and measures in trade or commerce for the purpose of determining the weight or measure of a commodity without a valid weights and measures registration issued by the department.

Amended by Chapter 358, 2004 General Session

#### **4-9-13. Weighing and measuring devices -- Presumption.**

If a weighing or measuring device is in a place where buying or selling is commonly carried on, there is a rebuttable presumption that the weighing or measuring device is regularly used for the business purposes of that place.

Enacted by Chapter 2, 1979 General Session

#### **4-9-15. Registration of commercial establishments using weights and measures -- Approved weights and measures inspectors -- Application -- Fee -- Expiration -- Renewal.**

(1) (a) Pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall establish rules providing for the registration of weights and measures users and issuance of certification of weights and measures devices to ensure the use of correct weights and measures in commerce or trade.

(b) The division may:

(i) determine whether weights and measures are correct through:

(A) inspection and testing by department employees; or

(B) acceptance of an inspection and testing report prepared by a registered weights and measures service person;

(ii) establish standards and qualifications for registered weights and measures service persons; and

(iii) determine the form and content of an inspection and testing report.

(c) A weights and measures user shall register with the department.

(d) Prior to granting a registration to a weights and measures user, the department shall determine whether the weights and measures user complies with the rules established under Subsection (1)(a).

(e) An applicant shall register with the department, in writing, using forms required by the department.

(f) The department shall issue a registration to an applicant, if the department determines that the applicant meets the qualifications of registration established under Subsection (1)(a).

(g) If the applicant does not meet the qualifications of registration, the

department shall notify the applicant, in writing, that the applicant's registration is denied.

(h) (i) If an applicant submits an incomplete application, a written notice of conditional denial of registration shall be provided to an applicant.

(ii) The applicant shall correct the deficiencies within the time period specified in the notice to receive a registration.

(i) (i) The department may, as provided under Subsection 4-2-2(2), charge the weights and measures user a registration fee.

(ii) The department shall retain the fees as dedicated credits and shall use the fees to administer the registration of weights and measures users.

(2) (a) A registration, issued under this section, shall be valid from the date the department issues the registration, to December 31 of the year the registration is issued.

(b) A registration may be renewed for the following year by applying for renewal by December 31 of the year the registration expires.

(3) A registration, issued under this section, shall specify:

(a) the name and address of the weights and measures user;

(b) the registration issuance and expiration date; and

(c) the number and type of weights and measures devices to be certified.

(4) (a) The department may immediately suspend a registration, issued under this section, if any of the requirements of Section 4-9-12 are violated.

(b) (i) The holder of a registration suspended under Subsection (4)(a) may apply for the reinstatement of a registration.

(ii) If the department determines that all requirements under Section 4-9-12 are being met, the department shall reinstate the registration.

(5) (a) A weights and measures user, registered under this section, shall allow the department access to the weights and measures user's place of business to determine if the weights and measures user is complying with the registration requirements.

(b) If a weights and measures user denies access for an inspection required under Subsection (5)(a), the department may suspend the weights and measures user's registration until the department is allowed access to the weights and measures user's place of business.

Amended by Chapter 378, 2010 General Session